



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 9, 1996

Mr. Larry A. Baskind  
Baskind, Samaniego & Hosford, P.C.  
300 East Main, Suite 908  
El Paso, Texas 79901-1379

OR96-1618

Dear Mr. Baskind:

As counsel for the Canutillo Independent School District (the "school district"), you ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 100586.

The school district received a request for information concerning allegations of sexual or physical abuse made by students against various school district personnel. You assert that the requested information is excepted from required public disclosure based on sections 552.026, 552.101 and 552.114 of the Government Code.

Section 552.101 of the Government Code excepts from required public disclosure information that is confidential by law, including information that is deemed confidential by statute. Section 261.201(a) of the Family Code reads as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

The requested information consists of "reports, records, communications, and working papers used or developed" in an investigation conducted under chapter 261 of the Family Code. We believe subsection (a) is applicable to the requested information. Consequently, we conclude that the school district must withhold the information from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 262.201(a) of the Family Code.

Although not dispositive of this request, for your information in handling future requests for information, we offer the following discussion. Section 552.026 of the Government Code incorporates into the Open Records Act the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g ("FERPA"). Under FERPA, "education records" are records that

- (i) contain information directly related to a student; and
- (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

20 U.S.C. § 1232g(a)(4)(A). *See also* Open Records Decision Nos. 462 (1987), 447 (1986). We believe the requested records are "education records" subject to FERPA. Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." Open Records Decision Nos. 332 (1982), 206 (1978). This office has recently issued Open Records Decision No. 634 (1995), which concluded: (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception..

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo  
Assistant Attorney General  
Open Records Division

KHG/rho

Ref. ID# 100586

Enclosures: Submitted documents

cc: Mr. Raul Hernandez  
Reporter  
El Paso Times  
P.O. Box 20  
El Paso, Texas 79999  
(w/o enclosures)